

**UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA**

GREGORY BENNETT,

Case No.: 3:19-cv-00013-MMD-WGC

Plaintiff,

ORDER

V.

Re: ECF Nos. 12, 13

JOHN KEAST, *et al.*,

Defendants.

13 Before the court are Plaintiff's Motion for Appointment of Counsel (ECF No. 12) and
14 Plaintiff's Motion to Stay Pending Reconsideration of Motion for Appointment of Counsel
15 (ECF No. 13).

16 Plaintiff's Motion for Appointment of Counsel (ECF No. 12) is based on (1) the fact that
17 "Plaintiff is incapable of prosecuting this case without assistance of counsel," (2) that Plaintiff has
18 "cancer in my throat and temple area of the left side of my head," (3) that "the treatment
19 discontinued by NDOC medical some fourteen (14) weeks ago due to surgery being allegedly
20 scheduled but to date it has not occurred," (4) that "the mass is effecting my ability to think,
21 concentrate and write," and (5) that Plaintiff's incarceration will greatly limit his ability to
22 effectively litigate his case. (*Id.* at 6.)

1 Plaintiff's rationale for appointment of counsel is substantially similar to the motion (ECF
2 No. 1-2) Chief Judge Du denied in the court's screening order (ECF No. 3). The difference
3 between that motion and the present one is that Plaintiff now complains of a pain near his temple
4 area which supposedly complicates his reasoning process (a contention which was not averred in
5 his complaint). However, Plaintiff attaches no documentation (i.e., medical records) to support
6 his claim he is not able to articulate his claims.

7 A litigant in a civil rights action does not have a Sixth Amendment right to appointed
8 counsel. *Storseth v. Spellman*, 654 F.2d 1349, 1353 (9th Cir. 1981). The United States Supreme
9 Court has generally stated that although Congress provided relief for violation of one's civil rights
10 under 42 U.S.C. § 1983, the right to access to the courts is only a right to bring complaints to
11 federal court and not a right to discover such claims or even to litigate them effectively once filed
12 with a court. *Lewis v. Casey*, 518 U.S. 343, 354-355 (1996).

13 In very limited circumstances, federal courts are empowered to request an attorney to
14 represent an indigent civil litigant. The circumstances in which a court will grant such a request,
15 however, are exceedingly rare, and the court will grant the request under only extraordinary
16 circumstances. *United States v. 30.64 Acres of Land*, 795 F.2d 796, 799-800 (9th Cir. 1986);
17 *Wilborn v. Escalderon*, 789 F.2d 1328, 1331 (9th Cir. 1986).

18 A finding of such exceptional or extraordinary circumstances requires that the court
19 evaluate both the likelihood of Plaintiff's success on the merits and the *pro se* litigant's ability to
20 articulate his claims in light of the complexity of the legal issues involved. Neither factor is
21 controlling; both must be viewed together in making the finding. *Terrell v. Brewer*, 935 F.2d 1015,
22 1017 (9th Cir. 1991), *citing Wilborn, supra*, 789 F.2d at 1331. Plaintiff equates the fact that his
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1 complaint survived screening is an indication that his claims have merit. Chief District Judge
2 Miranda M. Du only stated that Plaintiff presented a “colorable deliberate indifference to serious
3 medical needs” claim. (ECF No. 3 at 5.) Additionally, Plaintiff has shown an ability to articulate
4 his claims. (ECF Nos. 1, 12, 13.)

5 In the matter of a case's complexity, the Ninth Circuit in *Wilborn* noted that:

6 If all that was required to establish successfully the
7 complexity of the relevant issues was a demonstration of
8 the need for development of further facts, practically all
9 cases would involve complex legal issues. Thus,
10 although *Wilborn* may have found it difficult to
11 articulate his claims *pro se*, he has neither demonstrated
12 a likelihood of success on the merits nor shown that the
13 complexity of the issues involved was sufficient to
14 require designation of counsel.

15 The Ninth Circuit therefore affirmed the District Court's exercise of discretion in denying
16 the request for appointment of counsel because the Plaintiff failed to establish the case was
17 complex as to facts or law. 789 F.2d at 1331.

18 The substantive claim involved in this action is not unduly complex. Plaintiff's Complaint
19 was allowed to proceed on Count I alleging an Eighth Amendment deliberate indifference to
20 serious medical needs claim against Defendants Keast and Mitchell. (ECF No. 3 at 6.)

21 Similarly, with respect to the *Terrell* factors, Plaintiff has failed to convince the court of
22 the likelihood of success on the merits of his claims.

23 While any *pro se* inmate such as Mr. Bennett would likely benefit from services of counsel,
24 that is not the standard this court must employ in determining whether counsel should be appointed.
25 *Wood v. Housewright*, 900 F.2d 1332, 1335-1336 (9th Cir. 1990).

26 The court does not have the power “to make coercive appointments of counsel.”
27 *Mallard v. U. S. Dist. Ct.*, 490 US 296, 310 (1989). Thus, the court can appoint counsel only under
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1 exceptional circumstances. *Palmer v. Valdez*, 560 F.3d 965, 970 (9th Cir. 2009) [cert den 130
2 S.Ct. 1282 (2010)]. Plaintiff has not shown that the exceptional circumstances necessary for
3 appointment of counsel are present in this case.

4 **IT IS HEREBY ORDERED** that Plaintiff's Motion for Appointment of Counsel
5 (ECF No. 12) is **DENIED**.

6 **IT IS FURTHER ORDERED** that Plaintiff's Motion to Stay Pending Reconsideration of
7 Motion for Appointment of Counsel (ECF No. 13) is **DENIED** as moot.

8 Dated: March 10, 2020.

9 
10 WILLIAM G. COBB
11 UNITED STATES MAGISTRATE JUDGE